

COUNTY NOTICES PURSUANT TO A.R.S. § 49-112

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NOTICE OF PROPOSED RULEMAKING

MARICOPA COUNTY ORDINANCES

P-27: VEHICLE PARKING AND USE ON UNSTABILIZED VACANT LOTS

P-28: OFF-ROAD VEHICLE USE IN UNINCORPORATED AREAS OF MARICOPA COUNTY

[M10-323]

PREAMBLE

- 1. Ordinance/Rule Affected**

P-27 Vehicle Parking and Use on Unstabilized Vacant Lots	<u>Rulemaking Action</u>
P-28 Off-Road Vehicle Use in Unincorporated Areas of Maricopa County	Amend
- 2. Statutory authority for the rulemaking:**

Authorizing statutes: A.R.S. §§ 49-474.01, 11-251, and 9-500.04

Implementing statutes: A.R.S. § 49-112
- 3. List of all previous notices appearing in the register addressing the proposed rule:**

None published.
- 4. The name and address of department personnel with whom persons may communicate regarding the ordinance:**

Name: Kathleen Sommer

Address: Maricopa County Air Quality Department
Planning and Analysis Division
1001 N. Central Ave., Suite 595
Phoenix, AZ 85004

Telephone: (602) 506-0169

Fax: (602) 506-6179

E-mail: aqplanning@mail.maricopa.gov
- 5. An explanation of the ordinance, including the department's reasons for initiating the amendment to the Ordinance:**

The Maricopa County Air Quality Department is proposing to revise ordinances, P-27: Vehicle Parking and Use on Unstabilized Vacant Lots and P-28: Off-Road Vehicle Use in Unincorporated Areas of Maricopa County.

Background: These ordinances were adopted by the Maricopa County Board of Supervisors on February 20, 2008. As authorized under Arizona Revised Statute (A.R.S. § 49-474.01(A)(7)), P-27 applies in the unincorporated sections of Area A within Maricopa County and while restricting vehicle parking and use on unpaved property. P-27 allows for vehicle access to properties if lawful authority is obtained from the land owner and if such use does not violate any other applicable laws. Authorized under A.R.S. § 11-251(43), P-28 applies to all unincorporated areas within Maricopa County and applies to any person operating a vehicle on unpaved private property or unpaved public property. These ordinances fulfill the mandatory emissions curtailment elements as required by the passage of Senate Bill 1552 (2007) and commitments made in the Five Percent Plan to reduce PM₁₀ emissions or PM₁₀ precursor emissions by 5 percent each year (Five Percent Plan) in the Phoenix non-attainment area as required by the Clean Air Act.

Summary: The current proposed revisions to these ordinances result from recommendations made during meetings with the Maricopa County Justices of the Peace. The proposed changes to Section 4 of the ordinances will support a more flexible, graduated or tiered monetary fine for consecutive violations that can be enforced over a three year period. The proposed revisions impose a civil penalty and eliminate the more serious class 3 misdemeanor for

parking on unstabilized vacant lots. In P-27, the tiered fines under the civil code range from \$50 for the first violation, \$100 for a second violation and \$250 for a third and any subsequent violation within three years. Also eliminated from the P-27 ordinance penalty structure is the option to complete an off-highway motor vehicle safety and environmental ethics course.

The proposed tiered fines in P-28 replace a class 3 misdemeanor with civil violations for the first and second offense, \$100 and \$250 respectively. The criminal class 3 misdemeanor penalty would apply after the third or any subsequent offense within a three-year period. Additionally the P-28 penalty structure allows the option of completing community restitution or an off-highway motor vehicle safety and environmental ethics course. Other proposed amendments to these ordinances clarify several definitions, address inconsistencies within the ordinance, and clarify exemptions.

During the rulemaking process, the department conducted two public workshops: on September 30, 2008 and February 4, 2010 to solicit stakeholder comments on these ordinances. Stakeholder responses at these workshops came from regulatory agencies, the community and representatives of the 8500 member Off-Highway Vehicle (OHV) association. Additionally the department conducted nine internal meetings with staff, and three meetings with stakeholders. Also the department has received numerous written comments from stakeholders regarding this rulemaking. Issues raised during this process and at the workshops are as follows:

- a. Why is there a recording requirement to dedicate a road or highway?
- b. Do state trespass laws and state laws enacted for the Arizona Game and Fish Department apply to these county ordinances? (A.R.S. § 13-1502(A)(1); A.R.S. § 17-304)
- c. Clarify the P-28 “safety and environmental course” option.
- d. Do these ordinances regulate the types of recreation private property owners can allow on their property?
- e. How do the fugitive dust ordinances P-27 & P-28 differ from the county fugitive dust Rules 310 and 310.01?
- f. Why does P-28 apply to all unincorporated areas of Maricopa County whereas P-27 only applies to the unincorporated areas of Area A?
- g. How can OHV riders determine which trails they can lawfully access that traverse multiple properties each having different owners?
- h. Why does the proposed definition of an approved trail system allow “designated or managed or opened” trail systems?
- i. Why are the penalties for creating fugitive dust on commercial sites so many magnitudes higher than the penalty for public OHV riders creating fugitive dust?

The details of these issues are described below. Following such discussion is a list of specific amendments being proposed for the ordinances.

Issues Raised and Discussed During this Rulemaking Process:

- a. Why is there a recording requirement to dedicate a road or highway?

During these ordinance proceedings stakeholders objected to the recording requirement needed to establish a private road, highway or managed trail as well as when the ordinances were originally adopted in February, 2008. The definition of a road or highway in P-28 is consistent with A.R.S. § 28-1171 and the Maricopa County Zoning and Building Code definition of private road. After reviewing Arizona Revised Statutes, the Code of Federal Regulations, the Maricopa County Zoning Ordinance, consulting with the concerned public and trust land managers, it was concluded that P-28 cannot serve its purpose to reduce unrestricted cross country vehicle travel unless appropriate routes can be identified with a recorded document.

- b. Do state trespass laws and state laws enacted for the Arizona Game and Fish Department apply to these county ordinances? (A.R.S. § 13-1502(A)(1); A.R.S. § 17-304)

A.R.S. § 13-1502(A)(1)(Criminal Trespass in the third degree) applies to all criminal trespass where someone knowingly enters or remains unlawfully on any real property. The county ordinances do not address “access” to properties and only restricts where vehicles owners can operate or drive their vehicles. The county ordinances do not address access by other means such as walking. These ordinances describe that vehicle operators are responsible to understand where they are allowed to operate their vehicles just as hunters and anglers are responsible for knowing which lands are open to recreational activity.

A.R.S. § 17-304 (Prohibition by Landowner upon hunting; posting) establishes policies and programs managed by the Arizona Game and Fish Department. Specifically A.R.S. § 17-304 provides landowners who desire to prohibit hunting, fishing or trapping on their lands the authority to post such lands closed to hunting, fishing or trapping using notices or signboards. The county ordinances do not supersede this authority of the landowners

on their own property. P-28 restricts cross country vehicle travel by identifying appropriate routes and does not address recreational activities such as hunting, fishing, or trapping.

c. Clarify the P-28 “safety and environmental course” option.

As approved by Senate Bill 1167 (2008) the content of the off-highway vehicle safety course is described in A.R.S. § 28-1175. By statute, the Arizona Game and Fish Department conducts or approves this educational course of instruction in off-highway vehicle safety and environmental ethics. The course includes instruction on off-highway vehicle uses that limits air pollution and harm to natural terrain, vegetation and animals. Successful completion of the course requires passage of a written examination.

d. Do these ordinances regulate the types of recreation private property owners can allow on their property?

Private property access, use, exclusion, and management are controlled by the private property owner and county ordinances do not supersede this private property owner’s rights. Also county regulations do not specify or address types of recreation allowed on private properties. The property owner can allow any or all types of recreation on their properties such as hunting, fishing, and trapping as long as they do not violate any other applicable laws or rules such as County Rule 310.01. Irrespective of what property owners choose to do on their land, they are still responsible for maintaining and stabilizing their properties under Maricopa County Rule 310.01.

e. How do the fugitive dust ordinances P-27 & P-28 differ from the county fugitive dust Rules 310 and 310.01?

The P-27 and P-28 dust ordinances reduce unrestricted vehicle access on unstabilized properties and do not supersede or overlap the Maricopa County fugitive dust rules (Rules 310 and 310.01) rather they close the compliance loopholes in these existing rules. The difference between the P-27, P-28 fugitive dust ordinances and the fugitive dust rules (Rules 310 and 310.01) is the ordinances apply to vehicle owners operating on unpaved property and the rules apply to property owners. These rules require property owners to maintain unpaved open areas and vacant lots to meet stabilization standards. Together these regulations fulfill mandatory emissions curtailment elements as required by the passage of Senate Bill 1552 (2007) and commitments made in the Five Percent Plan for PM₁₀ as required by the Clean Air Act.

f. Why does P-28 apply to all unincorporated areas of Maricopa County whereas P-27 only applies to the unincorporated areas of Area A?

The two ordinances apply in different jurisdictions due to different statutory authorities. P-28 is authorized by Title 11 of the Arizona Revised Statutes which applies to all of Maricopa County. P-27 is authorized by Senate Bill 1552 (2007), under Title 49 of the Arizona Revised Statutes requiring the adoption an ordinance for Area A within Maricopa County. P-28’s purpose is to reduce unrestricted cross country vehicle travel in unincorporated areas of Maricopa County. Ordinance P-27’s purpose is to reduce vehicle parking and use in Area A of Maricopa County.

g. How can OHV riders determine which trails they can lawfully access that traverse multiple properties each having different owners?

Stakeholders commented that Arizona is a patchwork quilt of jurisdictions challenging OHV riders recreating across multiple properties. In response to this confusion of identifying an approved trail, the county is proposing revisions that allow private property owners to make agreements with land management agencies who can take responsibility for stabilizing and maintaining these routes, roads, and trails. The land management agencies can also help OHV riders identify the trails open for the OHV use by posting signs, creating maps or posting virtually. OHV riders will be able to rely on the land management agencies to identify trails rather than being burdened to approach individual property owners.

h. Why does the proposed definition of an approved trail system allow “designated, managed or opened” trail systems?

Restricting vehicles activities to approved trails limits cross-country, off-trail, vehicle activity and helps reduce fugitive dust. The proposed revisions allow vehicle routes and trails to be approved without going through the extensive and timely designation process. The proposed definition adds a managed or opened trail approval process where a responsible party is willing to maintain and manage the trail. This process allows a route that is not officially ‘designated’ to be approved for use by land management agencies as either ‘managed or opened’. This is consistent with A.R.S. § 28-1171.8 which defines an OHV trail that includes a choice of designated or

managed routes. Allowing additional methods of trail approval helps create more trails for OHV use and discourages the vehicle, off-trail activities.

- i. Why are the penalties for creating fugitive dust on commercial sites so many magnitudes higher than the penalty for public OHV riders creating fugitive dust?

The legislature has established appropriate penalties for different entities and the penalty structure in the county ordinances and rules follows this statutory authority.

Section By Section Explanation of Proposed Changes:

P-27: Vehicle Parking and Use on Unstabilized Vacant Lots

Section 2: To revise and clarify the definitions: Designated or Managed or Opened Trail Systems; Road or Highway and add a new definition of an “Enforcement Officer”;

Section 4: To revise this section to institute a new tiered penalty structure and to exclude the alternative to the monetary fine of community restitution time or completing a safety/ environmental course.

P-28: Off-Road Vehicle Use in Unincorporated Areas of Maricopa County

Section 2: To revise and clarify the definitions: Designated or Managed or Opened Trail Systems; Road or Highway and to add a new definition of an “Enforcement Officer”.

Section 3: To add a new paragraph clarifying where the restrictions apply and reorganize this section eliminating the redundancy in the explanations of obtaining lawful authority and consent of the lawful owner.

Section 3(D): To rename and clarify the definition of “Proof of Lawful Authority or Consent”.

Section 4: To revise this section to institute a new tiered penalty structure and to clarify the alternatives to the penalty.

Section 5: To clarify who the existing exemptions apply and add an exemption to the commercial farming practices.

In addition, the proposed amendments will also correct typographical or other clerical errors; make minor grammatical changes to improve readability or clarity; modify the format, numbering, order, capitalization, punctuation, or syntax of certain text to increase standardization within and among rules; or make various other minor changes of a purely editorial nature. As these changes do not alter the sense, meaning, or effect of the rule, they are not described in detail here, but can be readily discerned in the “strikeout and underline” version of the rule contained in Item 14 of this notice.

6. Demonstration of compliance with A.R.S. § 49-112:

Under A.R.S. § 49-479(C), a county may not adopt a rule or ordinance that is more stringent than the rules adopted by the Director of the Arizona Department of Environmental Quality (ADEQ) for similar sources unless it demonstrates compliance with the requirements of A.R.S. § 49-112(A).

A.R.S. § 49-112(A)

When authorized by law, a county may adopt a rule, ordinance, or other regulation that is more stringent than or in addition to a provision of this title or rule adopted by the director or any board or commission authorized to adopt rules pursuant to this title if all the following conditions are met:

1. The rule, ordinance or other regulation is necessary to address a peculiar local condition;
2. There is credible evidence that the rule, ordinance or other regulation is either:
 - (a) Necessary to prevent a significant threat to public health or the environment that results from a peculiar local condition and is technically and economically feasible
 - (b) Required under a federal statute or regulation, or authorized pursuant to an intergovernmental agreement with the federal government to enforce federal statutes or regulations if the county rule, ordinance or other regulation is equivalent to federal statutes or regulations.
3. Any fee or tax adopted under the rule, ordinance or other regulation will not exceed the reasonable costs of the county to issue and administer that permit or plan approval program.

P-27 and P-28 were passed in February, 2008 after they were mandated under Senate Bill 1552 (2007) and A.R.S. § 11-251(43) in response to the U.S. Environmental Protection Agency (EPA) designation of the Phoenix area as

serious non-attainment area for particulate matter at 10 microns. This designation requires, under the Clean Air Act Section 189, an annual reduction in PM₁₀ or PM₁₀ precursor emissions of not less than 5 percent each year (Five Percent Plan) in the Phoenix area. The Phoenix area was designated as serious non-attainment for PM₁₀ after failing to attain the PM₁₀ standard by the federal deadline of December 31, 2006 (72 FR 31183, June 6, 2007).

The currently proposed amendments to these ordinances, the tiered penalty structure, are administrative changes and do not change the substance of these ordinances. These revisions support a more flexible, graduated or tiered monetary fine for consecutive ordinance violations. Imposing a graduated fine structure encourages public awareness of the importance of these regulations and the potential severity of violating them. Imposing a civil penalty for initial P-28 violations allows a public education process or warning before the third offense becomes a more severe criminal violation. Because these proposed revisions are administrative and do not impact the original ordinance purpose to reduce PM₁₀ emissions under the original mandates, this demonstrates these ordinance revisions continue to be necessary to address this peculiar local condition and qualifies under A.R.S. § 49-112(A).

A.R.S. § 49-112(B)

The A.R.S. § 49-112(B) demonstration did not apply because these particular rules are in the portion of the department's air quality program that is administered under direct statutory authority. Therefore, these rules were not adopted or revised in lieu of a state program.

7. Reference to any study relevant to the ordinance that the agency reviewed and either proposes to rely on in its evaluation of or justification for the ordinance, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision:

Not applicable

9. Preliminary summary of the economic, small business, and consumer impact:

P-27 restricts vehicle parking and use on vacant lots in Maricopa County. P-28 prevents unrestricted vehicle access on properties in Maricopa County. These ordinances regulate the reduction of emissions of PM₁₀ as required for the annual Five Percent Nonattainment Plan for PM₁₀ required by EPA as well as that required by Arizona Revised Statutes. These proposed ordinance revisions are administrative imposing a graduated monetary fine for violations and do not impose additional costs to implement, do not affect small business, and have negligible economic consequences for the community. This proposed tiered penalty structure does not affect the previously described economic impacts found in the P-27 Ordinance: Notice of Final Rulemaking 14 A.A.R § 1148, April 11, 2008 such as the physical health and welfare effects, particulate matter emissions, or additional costs for the department to enforce compliance of these ordinances.

Conclusion of summary of economic, small business, and consumer impact

These proposed graduated monetary fines do not change the substance of these ordinances and imposing the graduated fine structure should even benefit the public. The tiered fine structure helps bring about an awareness of the importance of these regulations and the potential severity of violating them. The penalty consequence of the first and second P-28 violations are civil violations and provide education to the public that these regulations are in place before receiving a third offense which can become a more severe criminal violation.

Because these proposed revisions are administrative changes, they do not impact the original ordinance purpose to reduce PM₁₀ emissions. The ordinances will continue to fulfill the mandatory emissions curtailment elements as required by the passage of Senate Bill 1552 (2007) and commitments made in the Five Percent Plan to reduce PM₁₀ emissions in the Phoenix nonattainment area as required by the Federal Clean Air Act.

10. Name and address of department personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Kathleen Sommer
Address: Maricopa County Air Quality Department
Planning and Analysis Division
1001 N. Central Ave., Suite 595
Phoenix, AZ 85004
Telephone: (602) 506-0169

Fax: (602) 506-6179

E-mail: aqplanning@mail.maricopa.gov

11. The time, place, and nature of the proceedings for the amendment, of the Ordinance:

Written oral proceeding requests or written comments or both will be accepted if received by October 4, 2010, by 5:00 P.M. Written oral proceeding requests or written comments or both may be mailed, e-mailed or hand delivered to the department (see Item 4 of this notice). An oral proceeding will be scheduled only upon the receipt of a written request. Written comments received during the comment period will be considered formal comments to the Notice of Proposed Rulemaking and will be responded to in the Notice of Final Rulemaking.

12. Other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Not applicable

14. The full text of these ordinances are as follows:

MARICOPA COUNTY ORDINANCE

P-27

VEHICLE PARKING AND USE ON UNSTABILIZED VACANT LOTS

INDEX

SECTION 1 – GENERAL

- A. PURPOSE
- B. APPLICABILITY

SECTION 2 – DEFINITIONS

- A. AREA A
- B. DESIGNATED, MANAGED OR OPENED TRAIL SYSTEM
- C. ENFORCEMENT OFFICER
- ~~C-D.~~ ROAD OR HIGHWAY
- ~~D-E.~~ VACANT LOTS
- ~~E-F.~~ VEHICLE

SECTION 3 – REQUIREMENTS

- A. RESTRICTED VEHICLE PARKING AND USE

SECTION 4 – ~~VIOLATIONS, NOTICES, AND PENALTIES~~ PENALTIES AND NOTICES:

- A. VIOLATIONS
- B. NOTICES

SECTION 5 – EXEMPTIONS

Adopted 02/20/08
Revised XX/XX/XX

MARICOPA COUNTY ORDINANCE

P-27

VEHICLE PARKING AND USE ON UNSTABILIZED VACANT LOTS

SECTION 1 – GENERAL:

- A. **PURPOSE:** This ordinance ~~restricts all limits particulate matter (PM₁₀) emissions into the ambient air from~~ unrestricted vehicle parking and use on unstabilized vacant lots.
- B. **APPLICABILITY:** This ordinance applies to vehicle parking and use in the unincorporated sections of Area A that are within Maricopa County.

SECTION 2 – DEFINITIONS: For the purpose of this ordinance, the following definitions ~~shall~~ apply, in addition to those definitions found in Rule 100 (General Provisions and Definitions) of these rules. In the event of any inconsistency between any of the Maricopa County air pollution control rules, the definitions in this ordinance take precedence.

- A. AREA A** – The part of the greater Phoenix metropolitan area where specific pollution control programs are in place for ozone, carbon monoxide, and particulate matter. As defined in Arizona Revised Statutes (A.R.S. § 49-541(1)), the area in Maricopa County delineated as follows:
Township 8 North, Range 2 East and Range 3 East
Township 7 North, Range 2 West through Range 5 East
Township 6 North, Range 5 West through Range 6 East
Township 5 North, Range 5 West through Range 7 East
Township 4 North, Range 5 West through Range 8 East
Township 3 North, Range 5 West through Range 8 East
Township 2 North, Range 5 West through Range 8 East
Township 1 North, Range 5 West through Range 7 East
Township 1 South, Range 5 West through Range 7 East
Township 2 South, Range 5 West through Range 7 East
Township 3 South, Range 5 West through Range 1 East
Township 4 South, Range 5 West through Range 1 East
- B. DESIGNATED, MANAGED OR OPENED TRAIL SYSTEM** – Roads, highways, multiple use corridors, trails or routes that are part of a system of trails and routes that are designated, managed or opened to public motor vehicle travel by a government land management agency by rule, order, travel management plan, sign, and/or map approved by such agency.
- C. ENFORCEMENT OFFICER** – A person who enforces rules, ordinances, codes or regulations including, but not limited to, Maricopa County Air Quality Department Inspectors, Building and Zoning Code Enforcement, Certified Peace Officers including, but not limited to, Maricopa County Sheriff Deputies.
- ~~C.D.~~ ROAD OR HIGHWAY** – The entire width between the boundary lines of every way publicly maintained by the federal government, a city, state agency, a town or a county if any part of the way is generally open to the use of the public for purposes of vehicular travel. For purposes of this ordinance, the term “road or highway” also includes designated, managed or opened trail systems, and service roads regardless of surface composition, and any other private property dedicated or otherwise reserved for public or private street uses, as evidenced by a recorded document providing vehicular access to more than one property or having thereon a public easement for such use.
- ~~D.E.~~ VACANT LOTS** – Any of the following described in Section ~~2(D)(1)~~ 2(E)(1) through Section ~~2(D)(4)~~ 2(E)(4) of this ordinance:
1. An unsubdivided or undeveloped tract of land.
 2. A subdivided residential, industrial, institutional, governmental, or commercial lot that contains no approved or permitted buildings, structures, or uses of a temporary or permanent nature.
 3. A partially developed residential, industrial, institutional, governmental, or commercial lot.
 4. For the purposes of this ordinance, a vacant lot is not a road or highway.
- ~~E.F.~~ VEHICLE** – A self propelled device and its appurtenances, excluding devices moved by human power or used exclusively on stationary rails or tracks.

SECTION 3 – REQUIREMENTS:

- A. RESTRICTED VEHICLE PARKING AND USE:** A person shall not park or use a vehicle on an unstabilized vacant lot within the unincorporated sections of Area A in Maricopa County.

SECTION 4 - VIOLATIONS, NOTICES, AND PENALTIES: PENALTIES AND NOTICES:

- A. VIOLATIONS:** A person who violates this Ordinance is ~~guilty of a class 3 misdemeanor~~ subject to a civil penalty of \$50. A second violation of this ordinance within three years is subject to a civil penalty of \$100 and a third or any subsequent violation within a three year period is subject to a civil penalty of \$250.
- B. In addition to or in lieu of a fine pursuant to this section, a judge may order the person to perform at least eight but not more than twenty four hours of a community restitution course related to the off highway operation of motor vehicles.**
- ~~C.B.~~ NOTICES:** For violations of this Ordinance, the Enforcement Officer shall use a uniform traffic ticket and complaint prescribed by the rules of procedure in civil traffic cases adopted by the Supreme Court. The Enforcement Officer may issue a citation to persons in violation of this Ordinance.

SECTION 5 – EXEMPTIONS:

- A.** The property owner, person entitled to immediate possession of the property, or invitee who has lawful authority permission from the land owner may operate such vehicles if such use does not violate any other applicable laws.

- B. Any site that has been issued a permit by the Control Officer for the control of fugitive dust from dust generating operations.

MARICOPA COUNTY ORDINANCE

P-28

OFF-ROAD VEHICLE USE IN UNINCORPORATED AREAS OF MARICOPA COUNTY

INDEX

SECTION 1 – GENERAL

- A. PURPOSE
- B. APPLICABILITY

SECTION 2 – DEFINITIONS

- A. DESIGNATED, MANAGED OR OPENED TRAIL SYSTEM
- B. ROAD OR HIGHWAY ENFORCEMENT OFFICER
- ~~B-C.~~ VEHICLE ROAD OR HIGHWAY
- ~~C-D.~~ VEHICLE

SECTION 3 – RESTRICTIONS

- A. UNPAVED PUBLIC PROPERTY
- B. UNPAVED PRIVATE PROPERTY
- C. DETERMINATION OF LAWFUL AUTHORITY OR CONSENT OF THE LAWFUL OWNER
- D. PROOF OF LAWFUL AUTHORITY OR CONSENT

SECTION 4 – ~~VIOLETIONS, NOTICES, AND PENALTIES~~ PENALTIES AND NOTICES

- A. PENALTIES
- B. ALTERNATIVE PENALTY
- C. NOTICES

SECTION 5 – ~~EXEMPTION~~ EXEMPTIONS

Adopted 02/20/08
Revised XX/XX/XX

MARICOPA COUNTY ORDINANCE

P-28

OFF-ROAD VEHICLE USE IN UNINCORPORATED AREAS OF MARICOPA COUNTY

SECTION 1 – GENERAL

- A. **PURPOSE:** This ordinance ~~restricts the limits~~ particulate matter (PM₁₀) emissions into the ambient air from unrestricted operation of any vehicle on unpaved property.
- B. **APPLICABILITY:** This ordinance applies to the operation of any vehicle in unincorporated ~~sections~~ areas within Maricopa County.

SECTION 2 – DEFINITIONS: For the purpose of this ordinance, the following definitions ~~shall~~ apply, in addition to those definitions found in Rule 100 (General Provisions and Definitions) of these rules. In the event of any inconsistency between any of the Maricopa County air pollution control rules, the definitions in this ordinance take precedence.

- A. **DESIGNATED, MANAGED OR OPENED TRAIL SYSTEM** – Roads, highways, multiple use corridors, trails or routes that are part of a system of trails and routes that are designated, managed or opened to public motor vehicle travel by a government land management agency by rule, order, travel management plan, sign, and/or map. approved by such agency.
- B. **ENFORCEMENT OFFICER:** A person who enforces rules, ordinances, codes, or regulations including, but not limited to, Maricopa County Air Quality Department Inspectors, Building and Zoning Code enforcement, Certified Peace Officers including, but not limited to, Maricopa County Sheriff Deputies.
- ~~B-C.~~ **ROAD OR HIGHWAY**—: The entire width between the boundary lines of every way publicly maintained by the federal government, a city, state agency, a town or a county if any part of the way is generally open to the use of the public for purposes of vehicular travel. For purposes of this ordinance, the term “road or highway” also includes designated, managed or opened trail systems, and service roads regardless of surface composition, and any ~~other~~

private property dedicated or otherwise reserved for public or private street uses, as evidenced by a recorded document providing vehicular access to more than one property or having thereon a public easement for such use.

- C.D. VEHICLE**—: A self-propelled device and its appurtenances, excluding devices moved by human power or used exclusively on stationary rails or tracks.

SECTION 3 – RESTRICTIONS: Vehicles operating on either unpaved public or private properties in the unincorporated areas of Maricopa County shall remain on roads or highways. A person operating a vehicle on portions of these properties other than roads or highways shall comply with the following:

- A. UNPAVED PUBLIC PROPERTY:** A person shall not access operating a vehicle on unpaved public property with any vehicle within the unincorporated areas of Maricopa County without shall obtain lawful authority. Lawful authority shall consist consists of one of the following: rules, regulations, or orders of a federal agency, this state, a county, or municipality. which Determination of lawful authority shall be made available to the public by any one of the following: options listed in Section 3(C) of this ordinance.

1. A sign to designate the property is/as open. Such sign shall be in compliance with the standard travel management signing protocol used by southwest land management agencies and shall at a minimum, be conspicuously placed at all points of vehicular access and contain the following information: "Travel must remain on designated routes." Copies of the standard travel management signing protocol are available for review at the Maricopa County Air Quality Department, 1001 North Central Avenue, Phoenix, AZ, 85004.
2. Through orders of a government land management agency.
3. Through most current maps approved by such government land management agency.
4. Virtual posting from a government land management agency.

- B. UNPAVED PRIVATE PROPERTY:** A person shall not operate operating any vehicle on unpaved private property within the unincorporated areas of Maricopa County without shall obtain the consent of the lawful property owner. Consent of the lawful owner consists of either or both of the following: can be obtained by any one of the options listed in Section 3(C) of this ordinance.

1. A sign to designate the property is/as open. Such sign shall be in compliance with the standard travel management signing protocol used by southwest land management agencies and shall at a minimum, be conspicuously placed at all points of vehicular access and contain the following information: "Travel must remain on designated routes." Copies of the standard travel management signing protocol are available for review at the Maricopa County Air Quality Department, 1001 North Central Avenue, Phoenix, AZ, 85004.
2. Prior written permission which contains the following:

- C. DETERMINATION OF LAWFUL AUTHORITY OR CONSENT OF THE LAWFUL OWNER:**
Determination of lawful authority or consent of the lawful owner shall be made available by any one of the options listed below:

1. A sign to designate the property is/as open. Such signs shall be in compliance with the standard travel management signing protocol used by each land managing agency which specifies the open roads and highways. The signs at a minimum shall be conspicuously placed at all points of vehicular access.
2. Posting, publishing, or filing a rule, regulation, travel management plan, or order at the locations identified at the government agency's office, or on its website.
3. Current maps published and approved by a government land management agency.
4. Virtual postings from a government land management agency.
5. Prior written recreational access agreement originating from the lawful owner granting vehicular access which shall contain the following:
 - (a) The name, address, and telephone number of the person or organization granting permission for the use of the property;
 - (b) A description of the interest the person or organization granting permission has in the property (i.e., property owner, lessee, or agent);
 - (c) If the person or organization granting permission is not the owner of the property, the written permission shall also contain the name, address, and telephone number of the property owner;
 - (d) Specify the period of time for which permission for the use of the property is being granted and whether access is approved for any or a combination of OHV recreation, hunting, fishing, and/or trapping; and
 - (e) The signature of the person or organization representative granting permission for the use of the property.
6. Written permission of consent originating from the lawful owner granting vehicular access, which shall contain the following:
 - (a) The name, address, and telephone number of the person granting permission for the use of the property;
 - (b) A description of the interest the person granting permission has in the property (i.e., property owner, lessee, or agent);

(c) If the person granting permission is not the owner of the property, the written permission shall also contain the name, address, and telephone number of the property owner;

(d) Specify the period of time for which permission for the use of the property is being granted; and

(e) The signature of the person representative granting permission for the use of the property.

~~C.D.~~ **PROOF OF LAWFUL AUTHORITY OR CONSENT:** Whenever any person is stopped by an Enforcement Officer for a violation of Section 3 of this ordinance, ~~he/she~~ such person shall, upon the request of the Enforcement Officer, identify or present ~~the lawful authority~~ proof of lawful authority or lawful owner consent as required in this section 3(C) of this ordinance.

SECTION 4 – VIOLATIONS, NOTICES, AND PENALTIES AND NOTICES: Violations of this ordinance shall be punishable by civil or criminal penalties. The issuance of any lawful authority, consent of the lawful owner, or written permission, as allowed by this ordinance, shall not relieve any person subject to the requirements of this ordinance from complying with any federal laws, Arizona laws, or the Maricopa County Air Pollution Control Regulations.

A. ~~A person who violates this ordinance is guilty of a class 3 misdemeanor.~~ **PENALTIES:** A person who violates this ordinance shall be subject to the following penalties:

1. For the first offense, a civil penalty of \$100.

2. For the second offense within a three-year period, a civil penalty of \$250.

3. For the third or any subsequent offense within a three-year period, a class 3 misdemeanor.

B. **ALTERNATIVE PENALTY:** In addition to or in lieu of a fine ~~pursuant to this section~~ under Section 4 of this ordinance, a judge may order the person to perform at least eight but not more than twenty-four hours of a community restitution ~~course~~ or complete a safety and environmental ethics course according to A.R.S. § 28-1175 related to the off-highway operation of motor vehicles, or both.

C. **NOTICES:** For violations of this ordinance, the Enforcement Officer shall use a uniform traffic ticket and complaint prescribed by the rules of procedure in civil traffic cases adopted by the Supreme Court. The Enforcement Officer may issue a citation to persons in violation of this ordinance.

SECTION 5 – EXEMPTION-EXEMPTIONS

A. This ordinance shall not apply during a period of emergency or if the operation is directed by a peace officer or other public authority.

B. ~~The~~ This ordinance shall not apply to the property owner, or person entitled to immediate possession of the property, or invitee who has lawful authority may operate such vehicles on the property if such use provided such property owner, or person does not violate any other applicable laws.

~~C.~~ For the purposes of this ordinance, unpaved public or unpaved private property does not include roads or highways.

~~D.C.~~ This ordinance shall not apply to operations directed by utilities for operation, distribution, and transmission systems and operations directed by railroad companies for operation and maintenance provided that both of the following conditions are met:

1. Operations are performed in a ~~or~~ using a marked company vehicle; and

2. If operations are performed in a ~~or~~ using a personal vehicle, then identification of the company shall be visible and readable by the public without having to be asked by the public (e.g., included ~~in~~ / posted ~~in~~ on a sign that is visible on the vehicle or ~~included~~ / ~~posted in a sign that is visible~~ in the window of the vehicle).

D. This ordinance shall not apply to commercial farming practices including activities of a dairy, a beef cattle feed lot, a poultry facility and a swine facility.

NOTICE OF RULEMAKING DOCKET OPENING

MARICOPA COUNTY AIR QUALITY DEPARTMENT

[M10-322]

1. Title and its heading: Maricopa County Air Pollution Control Regulations
Regulation and its heading: Regulation III – Control of Air Contaminants
Ordinance and its heading: P-27 Ordinance, Vehicle Parking and Use on Unstabilized Vacant lots; P-28 Ordinance, Off-Road Vehicle Use in Unincorporated Areas of Maricopa County

2. The subject matter of the proposed rule(s):

The Maricopa County Air Quality Department (department) is proposing revisions to the penalty sections of two ordinances: P-27 and P-28. These revisions support a more flexible, graduated or tiered monetary fine for consecutive ordinance violations. Imposing a graduated fine structure encourages public awareness of the importance of these regulations and the potential severity of violating them. The consequence of the initial P-28 violations are civil penalties before the third offense becomes a more severe criminal violation.

Because these proposed revisions are administrative changes, they do not impact the original ordinance purpose to reduce PM₁₀ emissions. The ordinances will continue to fulfill the mandatory emissions curtailment elements as required by the passage of Senate Bill 1552 (2007) and commitments made in the Five Percent Plan to reduce PM₁₀ emissions in the Phoenix nonattainment area as required by the Federal Clean Air Act. As part of this rulemaking, the department may add, delete, or modify additional rules as necessary.

3. A citation to all published notices relating to this proceeding:

Not applicable

4. The name and address of department personnel with whom persons may communicate regarding the proposed rule(s):

Name: Kathleen Sommer
Address: Maricopa County Air Quality Department
Planning and Analysis Division
1001 N. Central Ave., Suite 595
Phoenix, AZ 85004
Telephone: (602) 506-0169
Fax: (602) 506-6179
E-mail: aqplanning@mail.maricopa.gov

5. The time during which the department will accept written comments and the time and place where oral comments may be made:

To be announced in the Notice of Proposed Rulemaking

6. A timetable for department decisions or other action on the proceeding, if known:

To be announced in the Notice of Proposed Rulemaking